

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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GABRIEL YATES,

Plaintiff(s),

v.

NAPHCARE, INC., et al.,

Defendant(s).

Case No. 2:12-CV-1865 JCM (VCF)

ORDER

Presently before the court is defendant Naphcare, Inc.'s motion for summary judgment. (Doc. # 52). Also before the court is defendant Douglas Gillespie's motion for summary judgment. (Doc. # 53).

Instead of filing a response to either motion, *pro se* plaintiff Gabriel Yates filed a handwritten notice of voluntary dismissal. (Doc. # 57). Plaintiff filed his notice of voluntary dismissal before the deadline to file a response to either of the defendants' motions for summary judgment had passed. Plaintiff does not cite any of the Federal Rules of Civil Procedure in his motion for voluntary dismissal.

Federal Rule of Civil Procedure 41(a) governs voluntary dismissal of actions. Under Rule 41(a)(1), a plaintiff may voluntarily dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment, or a stipulation of dismissal signed by all parties who have appeared.

Defendant Gillespie filed an answer to plaintiff's second amended complaint on February, 28, 2014. (Doc. # 36). Also, both defendants Naphcare and Gillespie filed motions for summary judgment, (docs. ## 52, 53), before plaintiff's notice of voluntary dismissal.

1 Therefore, because plaintiff has not submitted a stipulation of dismissal signed by all parties who  
2 have appeared, plaintiff cannot voluntarily dismiss the case under Rule 41(a)(1).

3 Under Rule 41(a)(2), however, the court may dismiss an action at plaintiff's request on  
4 terms the court considers proper. Therefore the court will construe plaintiff's notice of voluntary  
5 dismissal as a motion for voluntary dismissal under Rule 41(a)(2).

6 Because both defendants have filed motions for summary judgment, in effect, all parties  
7 agree that the complaint does not have merit. Therefore, the court finds it proper to dismiss  
8 plaintiff's complaint under Rule 41(a)(2).

9 Accordingly,

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this matter be, and the  
11 same hereby is, DISMISSED.

12 IT IS FURTHER ORDERED THAT defendant Naphcare's motion for summary  
13 judgment (doc. # 52), and defendant Gillespie's motion for summary judgment (doc. # 53) be  
14 DENIED as moot.

15 IT IS FURTHER ORDERED that each party bear its own attorneys' fees and costs.

16 DATED November 14, 2014.

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UNITED STATES DISTRICT JUDGE